

HOUSE BILL 9037

By Warner

AN ACT to amend Tennessee Code Annotated, Title 8; Title 29; Title 33; Title 34; Title 56; Title 63; Title 68 and Title 71, relative to establishing uniform standards regarding restrictions relative to COVID-19.

WHEREAS, the American Medical Association (AMA)'s Code of Medical Ethics provides that a physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights; shall uphold the standards of professionalism and be honest in all professional interactions; shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient; shall respect the rights of patients; and shall regard responsibility to the patient as paramount while caring for a patient; and

WHEREAS, the AMA's Code of Medical Ethics Opinion 1.1.3 provides that physicians can best contribute to a mutually respectful alliance with patients by serving as their patients' advocates and by respecting patients' rights, which include a right to courtesy, respect, dignity, and timely, responsive attention to the patient's needs; the right to receive information from their physicians and to have opportunity to discuss the benefits, risks, and costs of appropriate treatment alternatives, including the risks, benefits, and costs of forgoing treatment; the right to ask questions about their health status or recommended treatment when they do not fully understand what has been described and to have their questions answered; the right to make decisions about the care the physician recommends and to have those decisions respected; the right to obtain copies or summaries of their medical records; and the right to obtain a second opinion, among other rights; and

WHEREAS, the AMA's Code of Medical Ethics Opinion 2.1.2 provides that when a patient lacks decision-making capacity, the physician has an ethical responsibility to identify an appropriate surrogate to make decisions on the patient's behalf, whom is either the person the patient designated as surrogate through a durable power of attorney for health care or other mechanism, or a family member or other intimate associate, in keeping with applicable law and policy if the patient has not previously designated a surrogate; to recognize that the patient's surrogate is entitled to the same respect as the patient; to provide advice, guidance, and support to the surrogate; to assist the surrogate to make decisions in keeping with the standard of substituted judgment, basing decisions on the patient's preferences, if any; and to assist the surrogate to make decisions in keeping with the best interest standard when the patient's preferences and values are not known and cannot reasonably be inferred; and

WHEREAS, Tennessee Rule 1200-08-01-.12 provides that each patient has, at a minimum, the right to privacy in treatment and personal care; the right to be free from mental and physical abuse; the right to refuse treatment; the right to refuse experimental treatment and drugs; the right to have access to a phone number to call if there are questions or complaints about care; the right to be involved in the decision making of all aspects of their care; and the right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment; and

WHEREAS, many Tennesseans with a diagnosis of COVID-19 or a subsequent diagnosis resulting from a COVID-19 infection who have been hospitalized during the present pandemic, or their surviving loved ones, have expressed frustrations with the denial of the specific rights expressed above; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new part:

68-11-2201. Short title.

This part is known and may be cited as the "COVID-19 Patients' Rights Act."

68-11-2202. Part definitions.

As used in this part:

(1) "COVID-19" means the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, including a mutation of SARS-CoV-2 or COVID-19;

(2) "Family member" means a child, mother, father, spouse, sibling, aunt, uncle, cousin, stepparent, stepchild, grandparent, grandchild, or an individual legally recognized to be in a familial relationship with the patient;

(3) "Healthcare practitioner" means an individual licensed under title 63 or this title providing care to a patient in a hospital;

(4) "Hospital" means an institution, place, building, or agency, licensed under this title, that represents and holds out to the general public as being ready, willing, and able to furnish care, accommodations, facilities, and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury, or disease or from another condition for which nursing, medical, or surgical services would be appropriate for care, diagnosis, or treatment;

(5) "Incapacitated":

(A) Means a patient who is in a physical or mental condition such that the patient is incapable of granting or denying informed consent; and

(B) Includes a physical or mental condition such that the patient is incapable of granting or denying informed consent that results from drugs or medical treatment;

(6) "Monoclonal antibody treatment" means bamlanivimab plus etesevimab, casirivimab plus imdevimab, sotrovimab, or another anti-COVID-19 monoclonal antibody product that targets the spike protein of COVID-19 and is approved or authorized by the federal food and drug administration for use as a treatment or prophylaxis for COVID-19;

(7) "Patient" means an individual under the care of a hospital who has a diagnosis of COVID-19 or a subsequent diagnosis resulting from a COVID-19 infection; and

(8) "Patient advocate" means:

(A) If the patient is capable of making decisions with regard to the patient's health care, a family member, friend, or other individual requested by the patient to assist the patient in making healthcare decisions during the patient's stay in the hospital; or

(B) If the patient is incapacitated, the individual with power of attorney over the patient's healthcare decisions.

68-11-2203. Administration of patient-requested treatments.

(a) A healthcare practitioner shall not restrict the administration of a monoclonal antibody treatment or another treatment, whether approved by the federal food and drug administration or not, to a patient for treatment of a diagnosis of COVID-19 or a subsequent diagnosis resulting from a COVID-19 infection if a written request is made by:

(1) The patient, if the patient is able to make medical decisions; or

(2) The patient's advocate, if the patient is incapacitated.

(b)

(1) If a healthcare practitioner complies with subsection (a) and the compliance does not constitute gross negligence, then the healthcare practitioner is not subject to:

(A) A cause of action by the patient, the patient's advocate, or the patient's estate for administration of the requested treatment;

(B) Adverse action by the healthcare practitioner's employer for administration of the requested treatment; or

(C) Adverse action by the entity responsible for licensing the healthcare practitioner for administration of the requested treatment.

(2) Providing a patient with a treatment that is not approved by the federal food and drug administration for a diagnosis of COVID-19 or a subsequent diagnosis resulting from a COVID-19 infection pursuant to this section does not constitute gross negligence.

(c) If a healthcare practitioner refuses to comply with subsection (a), then:

(1) The patient, the patient's advocate, or the patient's estate has a cause of action against the healthcare practitioner;

(2) The healthcare practitioner's employer shall remove the healthcare practitioner from the care of the patient and report the violation of this section to the entity responsible for licensing the healthcare practitioner; and

(3) The entity responsible for licensing the healthcare practitioner shall suspend the license of the healthcare practitioner for unprofessional or unethical conduct in accordance with applicable law.

68-11-2204. Transfer or release from care for patient-requested treatments.

(a)

(1) A healthcare practitioner or hospital shall not restrict the transfer or release from care of a patient to another healthcare practitioner or hospital for the purpose of administration of a monoclonal antibody treatment or another treatment if the request is made in writing by:

(A) The patient, if the patient is able to make medical decisions;

or

(B) The patient's advocate, if the patient is incapacitated.

(2) A healthcare practitioner or hospital shall transfer or release from care a patient pursuant to this subsection (a) within twenty-four (24) hours of the request being made.

(b) If a healthcare practitioner or hospital complies with subsection (a), then the healthcare practitioner is not subject to:

(1) A cause of action by the patient, the patient's advocate, or patient's estate for the transfer or release from care; or

(2) An adverse action by the entity responsible for licensing the healthcare practitioner or hospital for the transfer or release from care.

(c) If a healthcare practitioner refuses to comply with subsection (a), then:

(1) The patient, the patient's advocate, or the patient's estate has a cause of action against the healthcare practitioner;

(2) The healthcare practitioner's employer shall remove the healthcare practitioner from the care of the patient and report the violation of this section to the entity responsible for licensing the healthcare practitioner;

(3) The entity responsible for licensing the healthcare practitioner shall suspend the license of the healthcare practitioner for unprofessional or unethical conduct in accordance with applicable law; and

(4) The denial of transfer or release from care constitutes knowingly confining another unlawfully so as to interfere substantially with the patient's liberty and the healthcare practitioner is subject to prosecution under § 39-13-302.

(d) If the hospital employing or contracting with a healthcare practitioner requires the practitioner to not comply with subsection (a), then:

(1) The patient, the patient's advocate, or the patient's estate, and the healthcare practitioner each have a cause of action against the hospital; and

(2) The hospital is deemed a facility detrimental to the health, safety, and welfare of the patient and the entity responsible for licensing the hospital shall suspend the admission of new patients or residents pursuant to § 68-11-252.

68-11-2205. Access granted to patient advocate.

(a)

(1) A hospital shall not restrict a patient from having at least one (1) patient advocate, selected solely by the patient, present with the patient at all times during the patient's stay at the hospital for the purpose of advising about rights under this part and making decisions on the patient's behalf pursuant to this part.

(2) In order to have access pursuant to this subsection (a), the patient advocate must test negative for COVID-19 and not be exhibiting symptoms of another virus or communicable disease.

(3) For purposes of the advisory role of the patient advocate under this subsection (a), the hospital:

(A) Shall provide the full medical record of the patient in possession of the hospital to the patient advocate within two (2) hours of a written request by the patient advocate:

(i) If the patient is able to make medical decisions and agrees in writing to the disclosure; or

(ii) If the patient is incapacitated;

(B) Shall provide updates to the patient advocate within two (2) hours of a change in the condition of the patient:

(i) If the patient is able to make medical decisions and agrees in writing to the update; or

(ii) If the patient is incapacitated; and

(C) Shall update the patient advocate as to the patient's condition at least once every twenty-four (24) hours:

(i) If the patient is able to make medical decisions and agrees in writing to the update; or

(ii) If the patient is incapacitated.

(b) If a hospital complies with subsection (a), then the hospital is not subject to:

(1) A cause of action by the patient or patient's estate for that compliance; or

(2) An adverse action by the entity responsible for licensing the hospital for that compliance.

(c) If a hospital refuses to comply with subsection (a), then:

(1) The patient or the patient's estate has a cause of action against the hospital; and

(2) The hospital is deemed a facility detrimental to the health, safety, and welfare of the patient and the entity responsible for licensing the hospital shall suspend the admission of new patients or residents pursuant to § 68-11-252.

68-11-2206. Rights under this part to be posted.

A hospital shall post notice in a prominent location in each patient room and lobby of a patient's right to request treatments, to request a transfer or release from care, and to have access to a patient advocate pursuant to this part.

68-11-2207. Compliance with federal laws.

Each provision of this part takes effect only to the extent that the provision is consistent with federal laws and regulations.

SECTION 2. Tennessee Code Annotated, Section 29-34-802(d), is amended by adding the following as a new subdivision:

Apply to a cause of action brought pursuant to SECTION 1 of this act.

SECTION 3. The department of health and all health licensing boards affected by this act are authorized to promulgate rules, including emergency rules, to effectuate this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 5. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.